D.B.CIVIL SPECIAL APPEAL NO.918/2001
THE STATE OF RAJ.VS.RAJ KUMAR CHOUDHARY

18.4.2006

HON'BLE JUSTICE MRS.GYAN SUDHA MISRA
HON'BLE MR.JUSTICE CHATRA RAM JAT

Mr. SS Sharma GA for the State.
Mr. Ashok Guar for the respondent.

This appeal has been preferred against the order of the learned Single Judge passed in Civil Review Petition No.(Defect) 537/97 by which it was dismissed and the order passed on the writ petition granting appointment to the respondent-Raj Kumar Choudhary on account of his physical disability was upheld.

The circumstances under which this appeal arises, disclose that the respondent had filed a writ petition before the learned Single Judge challenging the denial of appointment to the post of Lower Division Clerk (for short 'LDC') in the reserved category earmarked for the “Physically Handicapped Persons.” The respondent is a post-graduate in Hindi and admittedly he is physically handicapped suffering physical impairment-spastic Hamiparesis on the right side of the Body causing stiffness and weakness of right limbs of the body. He had got his name registered in the employment exchange under the Physically Handicapped Rules 1976 but was denied appointment despite successive applications which he had filed. In the year 1991, the application of the petitioner for appointment on the post of LDC was rejected by the District Education Officer, Ajmer on the

plea that as per the roster point he was not entitled for appointment even though he was physically handicapped. As per the roster-point No.34 was earmarked for blind and point No.67 was for deaf and/ or mute while point No.100 was for physically handicapped persons. The petitioner/respondent herein claimed appointment in the category of physically handicapped person at point No.100 and the same having been denied to him, he filed the writ petition before the learned Single Judge.

The learned Single Judge, relying upon the authority delivered in the matter of Bajarang Lal Vs. State of Raj. and ors. bearing SBCWP.No.2211/1995 decided the matter on 17.4.1995 and was pleased to hold that if a candidate with a particular disability in the reserved category quota was not available, inter-se exchange of posts/vacancies in the reserved quota of physically handicapped persons was permissible.

Relying upon this authority as also the fact that the Additional Government Advocate representing the appellant-State conceded to the position that the petitioner/respondent was entitled to be considered for the appointment against reserved vacancy of physical handicapped person issued direction to the respondent-State to grant him appointment on the post of LDC in the category of physically handicapped person.

The respondent-State felt aggrieved with the concession made by the Additional Government Advocate in regard to the grant of appointment to the respondent and therefore filed a review petition which was dismissed in limine and the order passed earlier by the learned Single Judge allowing the writ petition was upheld.

Assailing the judgment and order of the learned Single Judge, it was submitted by the Additional Government Advocate in support of the case of the appellant-State of Rajasthan, that the respondent although has been granted appointment in pursuance of the order of the learned Single Judge, the same was granted subject to the result of the special appeal only and hence this appeal is fit to be pressed by the appellant-State. It was then submitted that even though the respondent is a physically handicapped person, the same itself is not sufficient to claim appointment without going through the formalities of written examination and qualifying in an interview. He has thus sought to impress upon the Court that mere eligibility seeking appointment in the category of physically handicapped person is not enough to grant appointment to the person in the physically handicapped quota.

This aspect of the matter was countered by Shri Gaur appearing for the respondent and attention of this Court was drawn to Rule 6 of the Rajasthan Handicapped Rules, 1976 which envisages that apart from

the normal procedure applicable to the general category candidates, the appointing authority may appoint physically handicapped persons also and such appointments shall be treated as regular.

Part III of Rule 6 of the Rajasthan Physical Handicapped Rule, 1976 is quoted herein for facility of reference as follows:-

> "**6. Methods of recruitment.-**(1) Subject to the provisions herein after contained in these Rules, recruitment or appointment to posts in the service shall be made by the following methods of recruitment in the proportion as indicated in Column Nos.3 and 4 of Schedule 1:-
>
> (a) by direct recruitment in accordance with the procedure laid down in Part IV of these Rules.
>
> Provided that the post of Stenographer and Lower Division Clerk shall be filled in by Combined Competitive Examination in accordance with the Syllabus as prescribed in Schedule-II and III through the agency of the Commission.
>
> Provided further that the appointing authority may appoint a physically handicapped person to any post of the service in accordance with the provisions of the Rajasthan Employment of Physically Handicapped Rules, 1976. Such appointment shall be treated as regular appointment.
>
> (b) by promotion in accordance with the procedure laid down in Part V of these Rules.
>
> (2) Recruitment to the service by the aforesaid methods shall be made in such a manner that the persons appointed to the service by each method do not at any time exceed the percentage laid down in the Rules/Schedule of the total cadre strength for each category from time to time.
>
> Provided that if the appointing authority is satisfied in consultation with the Government/Commission, as the case may be, that

> suitable persons are not available for appointment by either method of recruitment in the proportion so indicated in a particular year, appointment by other method in relaxation of the prescribed proportion may be made in the same manner as specified in these Rules."

A perusal of the entire Rule 6 clearly reflects the intention that although the appointment on the post of LDC is to be made holding a competitive examination, the proviso to the rule indicates that in case of physically handicapped persons straightaway an appointment may be made to the post as per the Rules; meaning thereby that exemption from competitive examination can be granted by the Head of the Department in case of physically disabled person. The intention of the Rule can be straightaway gathered on a reasonable interpretation of the Rule for granting appointment to the physically handicapped persons.

In view of the aforesaid rule, if the Head of the Department granted appointment to the respondent as per the roster point which had been prepared for the physically handicapped person, which appointment was also conceded to by the Additional Government Advocate before the learned Single Judge, we see no ground why this appeal should at all have been preferred by the appellant-State specially when the appointment has already been granted to the respondent in the year 1997. We, therefore, do not deem it just and appropriate to interfere with the same in the year 2006 when the respondent has already discharged duties on the post for

more than 9 years in order to examine whether the exchange of roster-point had been violated. Besides this, we have also taken note of the fact that the respondent was duly qualified for the post as he was also a post-graduate which was more than the requisite qualification for the post of LDC.

For all these reasons we find no substance in this appeal and hence it stands dismissed at the admission stage itself.

(CHATRA RAM JAT)J. (GYAN SUDHA MISRA)J.

PCG